

AMENDED IN ASSEMBLY AUGUST 5, 2013

AMENDED IN SENATE APRIL 16, 2013

SENATE BILL

No. 353

Introduced by Senator Lieu

February 20, 2013

An act to add Section 1367.041 to the Health and Safety Code, and to add Sections 10127.45 and 10133.10 to the Insurance Code, relating to health care coverage.

LEGISLATIVE COUNSEL'S DIGEST

SB 353, as amended, Lieu. Health care coverage: language assistance.

Existing law, the Knox-Keene Health Care Service Plan Act of 1975, provides for the licensure and regulation of health care service plans by the Department of Managed Health Care. A willful violation of the act is a crime. Existing law provides for the regulation of health insurers by the Department of Insurance.

Existing law requires the departments to adopt regulations establishing standards and requirements to provide enrollees and insureds with access to language assistance in obtaining health care services. Existing law requires health care service plans and health insurers, if they exceed certain enrollment thresholds, to implement programs to assess the needs of enrollees and insureds, and to provide translation and interpretation for medical services and translation of vital documents, as defined, to enrollees and insureds, and to report to the respective departments regarding internal policies and procedures related to cultural appropriateness. Existing law provides that a health care service plan is in compliance with the requirements if it is required to meet and meets the same or similar standards, as imposed by the Medi-Cal program.

This bill would require a health care service ~~plan plan, as specified,~~ that advertises or ~~markets; markets products in the individual or small group health care service plan markets,~~ or that allows others to market or advertise on its behalf, in a ~~language other than English; non-English language,~~ as provided, and that does not meet certain ~~enrollment thresholds; requirements,~~ to translate into that language specified documents. This bill would also require an insurer that markets, advertises, or allows others to market or advertise on its behalf, or produces educational materials for health insurance policies, ~~in the individual or small group health insurance markets in a language other than English; non-English language,~~ as provided, and that does not meet certain ~~enrollment thresholds; requirements,~~ to translate into that language specified documents. This bill would require both those health care service plans and insurers to use trained and qualified translators.

Existing law prohibits a health care service plan, except as provided, from publishing or distributing, or allowing to be published or distributed on its behalf, any advertisement unless a true copy of the advertisement has first been filed with the Director of the Department of Managed Health Care at least 30 days, or any shorter period of time by the director's rule or order, prior to its use and the director, by notice, has not found the advertisement, wholly or in part, to be untrue, misleading, deceptive, or otherwise not in compliance with the applicable provisions, and specified the deficiencies, within the 30 days, or any shorter period of time by the director's rule or order. The director, by rule or order, may classify plans and advertisements and exempt certain classes, wholly or in part, either unconditionally or upon specified terms and conditions, or for specified periods, from these requirements.

This bill would extend the approval requirements and exemptions to health insurers, as specified, and require the Department of Insurance to perform the related functions. The bill would prohibit the department from exempting certain classes of policies and advertisements from the requirements where it concerns new products or products offered by health insurers with a record, in the past 5 years, of violations of these provisions.

By placing additional requirements on health care service plans, the violation of which would be a crime, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.

State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1367.041 is added to the Health and
2 Safety Code, to read:

3 1367.041. (a) A health care service plan that advertises or
4 ~~markets, markets products in the individual or small group health~~
5 ~~care service plan markets,~~ or allows any other person or business
6 to market or advertise on its behalf, in a ~~language other than~~
7 ~~English that does not meet the minimum enrollee thresholds~~
8 ~~established under non-English language that does not meet the~~
9 ~~requirements set forth in Sections 1367.04 and 1367.07, or the~~
10 ~~regulations adopted thereunder, shall translate into that language~~
11 ~~all of the following documents: shall provide the following~~
12 ~~documents in the same non-English language:~~

13 (1) Welcome letters or notices of initial coverage, if provided.

14 (2) Applications for enrollment and any information pertinent
15 to eligibility or participation.

16 (3) Notices advising limited-English-proficient persons of the
17 availability of no-cost translation and interpretation services.

18 (4) Notices pertaining to the right and instructions on how to
19 ~~an enrollee may~~ file a grievance.

20 (5) Uniform summaries of benefits of coverage required by
21 Section 2715 of the federal Public Health Service Act (42 U.S.C.
22 Sec. 300gg-11) and any rules or regulations promulgated
23 thereunder.

24 (b) A health care service plan shall use a trained and qualified
25 translator for all written translations of marketing and advertising
26 materials relating to health care service plan products, and for all
27 the documents specified in subdivision (a).

28 (c) *This section shall apply to any specialized health care service*
29 *plan that offers an essential health benefit as defined in subdivision*

30 *(a) of Section 1367.005. This section shall not apply to a*

1 *specialized health care service plan that does not offer an essential*
2 *health benefit as defined in Section 1367.005.*

3 SEC. 2. Section 10127.45 is added to the Insurance Code, to
4 read:

5 10127.45. (a) Except as provided in subdivision (b), a health
6 insurer offering policies of health insurance, as defined in Section
7 106, shall not publish or distribute, or allow to be published or
8 distributed on its behalf, any advertisement unless both the
9 following conditions are met at least 30 days prior to the publishing
10 or distribution, or any shorter period as the department may allow
11 by regulation:

12 (1) A true copy of the advertisement has first been filed with
13 the department.

14 (2) The department, by notice, has not found the advertisement,
15 wholly or in part, to be untrue, misleading, deceptive, or otherwise
16 not in compliance with this code or the rules thereunder, and has
17 specified any deficiencies within the 30 days or any shorter time
18 as the ~~director~~ *commissioner* by rule or order may allow.

19 (b) Except as provided in subdivision (c), a health insurer that
20 has been admitted to transact health insurance under this part
21 continuously licensed under this chapter for the preceding 18
22 months may publish or distribute, or allow to be published or
23 distributed on its behalf, an advertisement without having filed
24 that advertisement with the department for prior approval, if the
25 insurer and the material comply with each of the following
26 conditions:

27 (1) The advertisement or a material provision thereof has not
28 been previously disapproved by the department by written notice
29 to the insurer and the insurer reasonably believes that the
30 advertisement does not violate any requirement of this code or the
31 rules thereunder.

32 (2) The insurer files a true copy of each new or materially
33 revised advertisement, used by it or by any person acting on behalf
34 of the insurer, with the department not later than 10 business days
35 after publication or distribution of the advertisement or within such
36 additional period as the department may allow by regulation.

37 (c) (1) If the department finds that any advertisement of a health
38 insurer has materially failed to comply with this code or the rules
39 thereunder, the department may, by order, require the insurer to
40 publish, in the same or similar medium, an approved correction

1 or retraction of any untrue, misleading, or deceptive statement
2 contained in the advertising, and may prohibit the insurer from
3 publishing or distributing, or allowing to be published or distributed
4 on its behalf, the advertisement or any new materially revised
5 advertisement without first having filed a copy thereof with the
6 department, 30 days prior to the publication or distribution thereof,
7 or any shorter period specified in the order.

8 (2) An order issued under this subdivision shall be effective for
9 12 months from its issuance and may be renewed by order if the
10 advertisements submitted under this subdivision indicate difficulties
11 of voluntary compliance with the applicable provisions of this
12 code and the rules thereunder.

13 (d) A health insurer, insurance agent, or other person regulated
14 under this code may, within 30 days after receipt of any notice or
15 order under this section, file a written request for a hearing with
16 the department.

17 (e) The department, by regulation, may classify plans and
18 advertisements and exempt certain classes, wholly or in part, either
19 unconditionally or upon specified terms and conditions or for
20 specified periods, from the application of subdivisions (a) and (b).
21 In no instance shall the department exempt new products or
22 products offered by health insurers with a record within the past
23 five years of violations of this section.

24 SEC. 3. Section 10133.10 is added to the Insurance Code, to
25 read:

26 10133.10. (a) An insurer that markets, advertises, or produces
27 educational materials for a health insurance policy, as defined in
28 Section 106, *in the individual or small group health insurance*
29 *markets*, or allows any other person or business to market or
30 advertise on its behalf, in a ~~language other than English that does~~
31 ~~not meet the minimum insured thresholds established under~~
32 ~~non-English language that does not meet the requirements set forth~~
33 ~~in Sections 10133.8 and 10133.9 or the regulations adopted~~
34 ~~thereunder, shall translate into that language all of the following~~
35 ~~documents; shall provide the following documents in the same~~
36 ~~non-English language:~~

37 (1) Welcome letters or notices of initial coverage, ~~if provided.~~
38 ~~if applicable.~~

39 (2) Applications for health insurance and any information
40 pertinent to eligibility or participation.

1 (3) Notices advising limited-English-proficient persons of the
2 availability of no-cost translation and interpretation services.

3 (4) Notices pertaining to the right and instructions on how ~~to~~
4 *an insured may* file a grievance.

5 (5) A matrix of the categories of health insurance benefits
6 outlined in the insurance policy including copayments and
7 coinsurance, exclusions, and limitations in the following sequence:
8 deductibles, lifetime maximums, professional services, outpatient
9 services, hospitalization services, diagnostic and therapeutic
10 radiological services, preventative health services, emergency
11 health care coverage including ambulance services, prescription
12 drug coverage, durable medical equipment, mental health services,
13 chemical dependency services, home health services, other services
14 or the uniform summary of benefits of coverage required by Section
15 2715 of the federal Public Health Service Act (42 U.S.C. Sec.
16 300gg-11) and any rules or regulations promulgated thereunder.

17 (b) An insurer shall use trained and qualified translators for the
18 translation of all marketing and advertising materials relating to
19 health insurance products and for all the documents specified in
20 subdivision (a).

21 SEC. 4. No reimbursement is required by this act pursuant to
22 Section 6 of Article XIII B of the California Constitution because
23 the only costs that may be incurred by a local agency or school
24 district will be incurred because this act creates a new crime or
25 infraction, eliminates a crime or infraction, or changes the penalty
26 for a crime or infraction, within the meaning of Section 17556 of
27 the Government Code, or changes the definition of a crime within
28 the meaning of Section 6 of Article XIII B of the California
29 Constitution.